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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/086,624	03/04/2002	Kiril A. Pandelisev	OPTOSCINT	6909

7590 09/25/2003

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EXAMINER

KUNEMUND, ROBERT M

ART UNIT PAPER NUMBER

1765

DATE MAILED: 09/25/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/086,624	PANDELISEV, KIRIL A.	
	Examiner	Art Unit	
	Robert M Kunemund	1765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-88 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-88 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____.  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                    | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____. | 6) <input type="checkbox"/> Other: _____                                    |

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The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1 to 88 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 to 61 of copending Application No. 10/011,718. Although the conflicting claims are not identical, they are not patentably distinct from each other because the difference between the two applications is the plasma source and reduced pressure. However, it would have been obvious to one of ordinary skill in the art to add a plasma source and reduce pressures in the copending application in order to increase the number of processes used in the chambers and lower impurities.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1 to 88 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 to 81 of copending Application No. 10/011,762. Although the conflicting claims are not identical, they are not patentably distinct from each other because the difference between the two

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applications is the plasma source and reduced pressure. However, it would have been obvious to one of ordinary skill in the art to add a plasma source and reduce pressures in the copending application in order to increase the number of processes used in the chambers and lower impurities.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1 to 88 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 to 72 of copending Application No. 10/011,717. Although the conflicting claims are not identical, they are not patentably distinct from each other because the difference between the two applications is the plasma source and reduced pressure. However, it would have been obvious to one of ordinary skill in the art to add a plasma source and reduce pressures in the copending application in order to increase the number of processes used in the chambers and lower impurities.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1 to 88 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 to 100 of U.S. Patent No. 5,993,540. Although the conflicting claims are not identical, they are not patentably distinct from each other because the difference between the two applications is the plasma source and reduced pressure. However, it would have been obvious to one of

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ordinary skill in the art to add a plasma source and reduce pressures in the copending application in order to increase the number of processes used in the chambers and lower impurities.

Claims 1 to 88 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 to 26 of U.S. Patent No. 6,071,339. Although the conflicting claims are not identical, they are not patentably distinct from each other because the difference between the two applications is the plasma source and reduced pressure. However, it would have been obvious to one of ordinary skill in the art to add a plasma source and reduce pressures in the copending application in order to increase the number of processes used in the chambers and lower impurities.

Claims 1 to 88 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 to 21 of U.S. Patent No. 6,153,011. Although the conflicting claims are not identical, they are not patentably distinct from each other because the difference between the two applications is the plasma source and reduced pressure. However, it would have been obvious to one of ordinary skill in the art to add a plasma source and reduce pressures in the copending application in order to increase the number of processes used in the chambers and lower impurities.

Claims 1 to 88 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 to 80 of U.S. Patent No. 6,334,899. Although the conflicting claims are not identical, they are not patentably

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distinct from each other because the difference between the two applications is the plasma source and reduced pressure. However, it would have been obvious to one of ordinary skill in the art to add a plasma source and reduce pressures in the copending application in order to increase the number of processes used in the chambers and lower impurities.

Examiner's Remarks

The remaining references are merely cited of interest as showing the state of the art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert M Kunemund whose telephone number is 703-308-1091. The examiner can normally be reached on 8 hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ben Utech can be reached on 703-308-3636. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0651.

RMK



ROBERT KUNEMUND  
PRIMARY EXAMINER